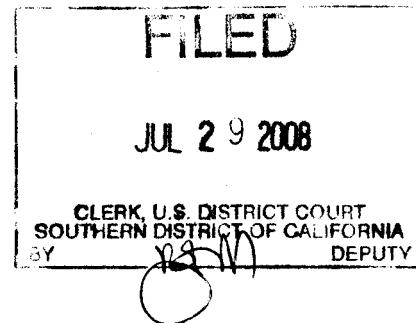


1 KAREN P. HEWITT
United States Attorney
2 MICHELLE M. PETTIT
Assistant United States Attorney
3 California State Bar No. 253406
United States Attorney's Office
4 Federal Office Building
5 880 Front Street, Room 6293
San Diego, California 92101
Telephone: (619) 557-7450



7 Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Magistrate Case No. 08MJ2167
Plaintiff,)
v.)
ELVIA REYES-ZABALA,)
Defendant.)

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**
(Pre-Indictment Fast-Track Program)

16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and
18 Michelle M. Pettit, Assistant United States Attorney, and defendant ELVIA REYES-ZABALA, by
19 and through and with the advice and consent of defense counsel, Kenneth R. McMullan, that:

20 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
21 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
22 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
23 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
24 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
25 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

26 //

27 //

28 || MIP:psd:7/17/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **August 15, 2008**.

6 4. The material witnesses, Maria De Lourdes Sanchez-Gonzalez, Samuel Cavalampio-
7 Calderon and Fausto Arellano-Valencia, in this case:

8 a. Are aliens with no lawful right to enter or remain in the United States;
9 b. Entered or attempted to enter the United States illegally on or about
10 July 15, 2008;

11 c. Were found in a vehicle driven by defendant at the San Ysidro, California Port
12 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that they were
13 aliens with no lawful right to enter or remain in the United States;

14 d. Were paying and/or having others pay on their behalf \$2,000-\$3,000 to others
15 to be brought into the United States illegally and/or transported illegally to their destination therein;
16 and,

17 e. May be released and remanded immediately to the Department of Homeland
18 Security for return to their country of origin.

19 5. After the material witnesses are ordered released by the Court pursuant to this
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
22 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

23 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
24 substantive evidence;

25 //

26 //

27 //

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Elvia Reyes-Zabala

1 b. The United States may elicit hearsay testimony from arresting agents
2 regarding any statements made by the material witness(es) provided in discovery, and such testimony
3 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
4 of (an) unavailable witness(es); and,

5 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
6 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
7 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
8 waives the right to confront and cross-examine the material witness(es) in this case.

9 6. By signing this stipulation and joint motion, defendant certifies that defendant has
10 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
11 further that defendant has discussed the terms of this stipulation and joint motion with defense
12 counsel and fully understands its meaning and effect.

Based on the foregoing, the parties jointly move the stipulation into evidence and for the immediate release and remand of the above-named material witness(es) to the Department of Homeland Security for return to their country of origin.

16 It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

20 Dated: 7/29/08



MICHELLE M. PETTIT

22 | Dated: 18 July 2008
23 |

MICHELLE M. PETTIT
Assistant United States Attorney

25 | Dated: 7/8/08

Elvia Reyes Zabala
ELVIA REYES-ZABALA
Defendant

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Elvia Reyes-Zabala

ORDER

Upon joint application and motion of the parties, and for good cause shown,
THE STIPULATION is admitted into evidence, and,
IT IS ORDERED that the above-named material witness(es) be released and remanded
forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated:

United States Magistrate Judge

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Elvia Reyes-Zabala